Supreme Court, U.S.
FILED
MAY 6 1999
OFFICE OF THE CLERK

No. 98-1473

In The

Supreme Court of the United States

MICHAEL CARRILLO, WARDEN,

Petitioner,

v.

ADRIAN SALMON,

Respondent.

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENT TO RESPONDENT'S BRIEF IN OPPOSITION

LEONARD J. FELDMAN
Heller Ehrman White & McAuliffe
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
(206) 389-6124

ERIC SCHNAPPER*
1100 N.E. Campus Parkway
Seattle, WA 98105-6617
(206) 616-3167

Counsel for Respondent

* *Counsel of Record*

On May 3, 1999, this Court granted certiorari with regard to the second Question Presented in *Roe v. Ortega*, No. 98-1441. The second Question Presented in the instant case is the same as that in *Roe v. Ortega*. We submit this Supplement to set forth our views regarding the appropriate disposition of the instant case in light of the Court's action in *Roe v. Ortega*.

Given that ruling, we suggest that the Court grant certiorari limited to the second Question Presented in the instant case. The general issue common to both this case and *Roe v. Ortega* is whether and under what circumstances an attorney has an obligation under the Sixth Amendment to file a notice of appeal following entry of judgment pursuant to a guilty plea or similar disposition. That issue, however, necessarily arises in a wide variety of factual contexts posing somewhat different problems and with possibly differing outcomes.

The circumstances of the instant case differ in a number of important respects from those in *Roe v. Ortega*. (1) At the last trial court proceeding in the instant case respondent Salmon expressly objected to the court's disposition of his case, putting the court and counsel on notice that he would presumably want to appeal the disposition to which he had objected. No similar objection was voiced at the last trial court proceeding in *Roe v. Ortega*. (2) Respondent Salmon actually filed a timely pro se notice of appeal; rather than appointing counsel to represent him, the California court responded by advising him of additional steps he was required to take to proceed pro se. The pro se notice of appeal filed by respondent Roe was untimely. (3) It was not until well after his last court appearance, and after he had been taken to a prison far from that court, that respondent Salmon realized that his attorney had decided not to file a motion to withdraw his plea; at that juncture respondent Salmon was no longer in contact with the attorney in question.

The Sixth Amendment obligations of counsel to pursue an appeal following a guilty plea will necessarily vary with the underlying circumstances. This Court will be better able to clarify the constitutional requirements, and to provide definitive guidance regarding this issue, if it considers and resolves the application of the Sixth Amendment in several distinct cases. The fact-specific nature of similar constitutional issues, such as when a party has given valid consent to a search[1], or when a defendant has waived his right to counsel at the trial court[2], have in the past been explored in a series of cases spanning several decades. The administration of justice would be better served, where possible, by addressing such an issue in several cases during the same Term.

---

[1] *Ohio v. Robinette*, 519 U.S. 33 (1996); *Florida v. Bostick*, 501 U.S. 429 (1991); *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *Thompson v. Louisiana*, 447 U.S. 649 (1980); *Washington v. Chrisman*, 455 U.S. 1 (1982); *Walter v. United States*, 447 U.S. 649 (1980); *United States v. Mendenhall*, 446 U.S. 544 (1980); *Lo-Ji Sales v. New York*, 442 U.S. 319 (1979); *United States v. Watson*, 423 U.S. 411 (1976); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

[2] *Godinez v. Smith*, 509 U.S. 389 (1993); *Edwards v. Arizona*, 451 U.S. 477 (1981); *Estelle v. Smith*, 451 U.S. 454 (1981); *Brewer v. Williams*, 430 U.S. 387 (1977); *Faretta v. California*, 422 U.S. 806 (1975); *Boyd v. Dutton*, 405 U.S. 1 (1972).

Dated: May 6, 1999

Respectfully submitted,

LEONARD J. FELDMAN
Heller Ehrman White & McAuliffe
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
(206) 389-6124

ERIC SCHNAPPER*
1100 N.E. Campus Parkway
Seattle, WA 98105-6617
(206) 616-3167

Counsel for Respondent
* *Counsel of Record*